

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 49 Drug Paraphernalia  
**SPONSOR(S):** Rouson and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones	Cunningham
2) Business & Professional Regulation Subcommittee			
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

### SUMMARY ANALYSIS

Section 893.147, F.S., establishes the following five drug paraphernalia crimes: use or possession of drug paraphernalia; manufacture or delivery of drug paraphernalia; delivery of drug paraphernalia to a minor; transportation of drug paraphernalia; and advertisement of drug paraphernalia.

Section 893.145, F.S., defines “drug paraphernalia” and includes an extensive list of items that are included in the term. It is important to note the items included as drug paraphernalia in s. 893.145, F.S., are not illegal to possess unless they are used, intended for use, or designed for use in a specified manner (e.g., intended to be used for growing a controlled substance).

Section 569.0073, F.S., specifically prohibits the retail sale of smoking pipes and devices listed in s. 569.0073, F.S. (these items are also included on the list of drug paraphernalia in s. 893.145, F.S.). The statute contains an exception that allows retail tobacco product dealers to sell the listed smoking pipes and devices if they:

- Derive at least 75 percent of its annual gross revenues from the retail sale of cigarettes, cigars, and other tobacco products; or
- Derive no more than 25 percent of its annual gross revenues from the retail of the certain drug paraphernalia.

The bill repeals s. 569.0073, F.S., relating to retail sale of smoking devices, in its entirety. The bill amends s. 893.147, F.S., to make it a first degree misdemeanor to sell or offer for sale at retail any of the drug paraphernalia listed in s. 893.145(12)(a)-(c) and (g)-(m), F.S. (these items include the smoking pipes and devices listed in s. 569.0073, F.S.). A second or subsequent violation is a third degree felony.

The bill also amends s. 569.006, F.S., to include a violation of s. 893.147, F.S., as cause for a retail tobacco product dealers’ permit to be suspended or revoked.

On February 27, 2013, the Criminal Justice Impact Conference determined that the bill will have an indeterminate prison bed impact on the Department of Corrections. The bill may also have a negative jail bed impact on local governments.

The bill is effective October 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Drug Paraphernalia**

Drug paraphernalia is defined in s. 893.145, F.S., as:

All equipment, products, and materials of any kind which are used, intended for use, or designed for use in the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893 or s. 877.111, F.S.<sup>1</sup>

The term includes, but is not limited to:

- (1) Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
- (2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
- (3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
- (4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.
- (5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
- (6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.
- (7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.
- (8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.
- (9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
- (10) Containers and other objects used, intended for use, or designed for use in storing, concealing, or transporting controlled substances.
- (11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
- (12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body, such as:
  - (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - (b) Water pipes;
  - (c) Carburetion tubes and devices;
  - (d) Smoking and carburetion masks;
  - (e) Roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand;
  - (f) Miniature cocaine spoons, and cocaine vials;
  - (g) Chamber pipes;
  - (h) Carburetor pipes;
  - (i) Electric pipes;
  - (j) Air-driven pipes;
  - (k) Chillums;
  - (l) Bongs;

<sup>1</sup> Section 893.02(4), F.S., defines “controlled substance” as “any substance named or described in Schedules I-V of s. 893.03, F.S.

- (m) Ice pipes or chillers;
- (n) A cartridge or canister, which means a small metal device used to contain nitrous oxide;
- (o) A charger, sometimes referred to as a “cracker,” which means a small metal or plastic device that contains an interior pin that may be used to expel nitrous oxide from a cartridge or container;
- (p) A charging bottle, which means a device that may be used to expel nitrous oxide from a cartridge or canister;
- (q) A whip-it, which means a device that may be used to expel nitrous oxide;
- (r) A tank;
- (s) A balloon;
- (t) A hose or tube;
- (u) A 2-liter-type soda bottle; and
- (v) Duct tape.<sup>2</sup>

Section 893.147, F.S., establishes the following five drug paraphernalia crimes:

- Use or possession of drug paraphernalia;
- Manufacture or delivery of drug paraphernalia;
- Delivery of drug paraphernalia to a minor;
- Transportation of drug paraphernalia; and
- Advertisement of drug paraphernalia.

It is important to note that the items listed above are not illegal to possess, use, manufacture, deliver, transport or advertise unless used in the manner described in the above drug paraphernalia definition.<sup>3</sup>

### **Retail Sale of Smoking Devices**

Section 569.0073, F.S., makes it a first degree misdemeanor<sup>4</sup> for any person to offer for sale at retail the following smoking pipes and smoking devices:

- Metal wooden acrylic, glass, stone, plastic, or ceramic smoking pipes, with or without screens, permanent screens or punctured metal bowls;
- Water pipes;
- Carburetion tubes and devices;
- Chamber pipes;
- Carburetor pipes;
- Electric pipes;
- Air-driven pipes;
- Chillums;
- Bongs; and
- Ice pipes or chillers.

The statute provides an exception that allows retail tobacco products dealers<sup>5</sup> to sell the above listed items if they:

- Derive at least 75 percent of their annual gross revenues from the retail sale of cigarettes, cigars, and other tobacco products; or
- Derive no more than 25 percent of their annual gross revenues from the retail of the certain drug paraphernalia.<sup>6</sup>

Retail tobacco product dealers are governed by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation (Division).<sup>7</sup> The Division is currently able to suspend or revoke the permit of a dealer if they violate any of the provisions in ch. 569, F.S.<sup>8</sup>

<sup>2</sup> Section 893.145(1)-(12), F.S.

<sup>3</sup> Section 893.145, F.S.

<sup>4</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>5</sup> Section 569.002, F.S., defines “retail tobacco products dealer” as the holder of a retail tobacco products dealer permit.

<sup>6</sup> Section 569.0073(b)(1)(2), F.S.

<sup>7</sup> Section 569.006, F.S.

<sup>8</sup> *Id.*

### **Effect of the Bill**

The bill repeals s. 569.0073, F.S., relating to retail sale of smoking devices, in its entirety.

The bill amends s. 893.147, F.S., to make the retail sale of drug paraphernalia a crime. The bill makes it a first degree misdemeanor to sell or offer for sale at retail any of the drug paraphernalia listed in s. 893.145(12)(a)-(c) and (g)-(m), F.S., and any second or subsequent violation a third degree felony.<sup>9</sup>

The bill also amends s. 569.006, F.S., to include a violation of s. 893.0147, F.S., as cause for a retail tobacco product dealers' permit to be suspended or revoked.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 893.147, F.S., relating to use, possession, manufacture, delivery, transportation, or advertisement, of drug paraphernalia.

Section 2. Amends s. 569.006, F.S., relating to retail tobacco dealers; administrative penalties.

Section 3. Repeals s. 569.0073, F.S., relating to the retail sale of certain smoking pipes and smoking devices.

Section 4. Provides an effective date of October 1, 2013.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

##### **2. Expenditures:**

On February 27, 2013, the Criminal Justice Impact Conference determined that the bill will have an indeterminate prison bed impact on the Department of Corrections.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

The bill does not appear to have any impact on local government revenues.

##### **2. Expenditures:**

The bill amends s. 893.147, F.S., to make the retail sale of drug paraphernalia a first degree misdemeanor for first time offenders. This may have a negative jail bed impact on local governments.

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<sup>9</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.  
**STORAGE NAME:** h0049.CRJS  
**DATE:** 3/15/2013

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Private retailers who were legally selling the items under s. 569.0073, F.S., may see a loss of income since the bill repeals s. 569.0073, F.S.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill makes it a first degree misdemeanor to sell or offer for sale at retail any of the drug paraphernalia listed in s. 893.145(12)(a)-(c) and (g)-(m), F.S. Because the bill uses the term "drug paraphernalia" to describe the prohibited items, it could be argued that such items could be sold or offered for sale at retail so long as they are not used in the manner described in the definition of drug paraphernalia in s. 893.145, F.S. If the intent is to prohibit the sale of such items altogether, the reference to "drug paraphernalia" to describe such items should be removed.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**